

JS 44 (Rev. 12/07, NJ 5/08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

RITA KUHN

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire  
Kimmel & Silverman, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
(215) 540-8888

**DEFENDANTS**

NCO FINANCIAL SYSTEMS, INC

County of Residence of First Listed Defendant \_\_\_\_\_

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known) \_\_\_\_\_

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |                                         | PTF                        | DEF                        |                                                               | PTF                        | DEF                        |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation                                                | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. SECTION 1692

Brief description of cause:  
Fair Debt Collection Practices Act**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
**DEMAND \$**

CHECK YES only if demanded in complaint:  
**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S)**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

Explanation:

4/8/11

DATE

SIGNATURE OF ATTORNEY OF RECORD

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 2627 Fulton Street, Apt. 3, Berkeley, CA 94704

Address of Defendant: 507 Prudential Bend, Horsham, PA 19044

Place of Accident, Incident or Transaction: \_\_\_\_\_  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases 15 U.S.C. 1692  
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify)

## ARBITRATION CERTIFICATION

(Check Appropriate Category)

Craig Ther Kimmel, counsel of record do hereby certify:  
☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;  
☐ Relief other than monetary damages is sought.

DATE: 4/8/11

Craig Ther Kimmel  
Attorney-at-Law

57105  
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 4/8/11

Craig Kimmel  
Attorney-at-Law

57105  
Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Rita Kohn

CIVIL ACTION

v.

NCO Financial Systems, Inc.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

4/8/11  
Date

Craig Thor Kimmel  
Attorney-at-law

Rita Kohn  
Attorney for

215-540-8888  
Telephone

877-788-2804  
FAX Number

kimmel@creditlaw.com  
E-Mail Address

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RITA KUHN, )  
)  
Plaintiff )  
)  
v. ) **Case No.:**  
)  
NCO FINANCIAL SYSTEMS, INC., ) **COMPLAINT AND DEMAND FOR**  
) **JURY TRIAL**  
Defendant )  
) **(Unlawful Debt Collection Practices)**

---

**COMPLAINT**

RITA KUHN ("Plaintiff"), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

**INTRODUCTION**

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (FDCPA).

**JURISDICTION AND VENUE**

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28

1 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising  
2 under the laws of the United States.

3  
4 3. Defendant conducts business and has an office in the Commonwealth  
5 of Pennsylvania, and therefore, personal jurisdiction is established.

6 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

7 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and  
8 2202.  
9

#### 10 PARTIES

11 6. Plaintiff is a natural person residing in the state of California.

12 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §  
13 1692a(3).  
14

15 8. Also, Plaintiff is a person granted a cause of action under the  
16 FDCPA. See 15 U.S.C. § 1692k(a) and Wenrich v. Cole, 2000 U.S. Dist. LEXIS  
17 18687 (E.D. Pa. Dec. 22, 2000).  
18

19 9. Defendant is a national debt collection company with its corporate  
20 headquarters located at 507 Prudential Road, Horsham, Pennsylvania, 19044-  
21 2308.  
22

23 10. Defendant is a debt collector as that term is defined by 15 U.S.C. §  
24 1692a(6), and sought to collect a consumer debt from Plaintiff.  
25

12. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

PLAINTIFF'S COMPLAINT

1 deceptive, or misleading representation or means in connection with the collection  
2 of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair  
3 or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. §  
4 1692f. The FDCPA is designed to protect consumers from unscrupulous  
5 collectors, whether or not there exists a valid debt, broadly prohibits unfair or  
6 unconscionable collection methods, conduct which harasses, oppresses or abuses  
7 any debtor, and any false, deceptive or misleading statements in connection with  
8 the collection of a debt.  
9  
10

11 14. In enacting the FDCPA, the United States Congress found that “[t]here  
12 is abundant evidence of the use of abusive, deceptive, and unfair debt collection  
13 practices by many debt collectors,” which “contribute to the number of personal  
14 bankruptcies, to marital instability, to the loss of jobs, and to invasions of  
15 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing  
16 laws and procedures for redressing debt collection injuries to be inadequate to  
17 protect consumers. 15 U.S.C. § 1692b.  
18  
19

20 15. Congress enacted the FDCPA to regulate the collection of consumer  
21 debts by debt collectors. The express purposes of the FDCPA are to “eliminate  
22 abusive debt collection practices by debt collectors, to insure that debt collectors  
23 who refrain from using abusive debt collection practices are not competitively  
24  
25



1 disadvantaged, and to promote consistent State action to protect consumers against  
2 debt collection abuses.” 15 U.S.C. § 1692e.

3  
4 **FACTUAL ALLEGATIONS**

5 16. At all pertinent times hereto, Defendant was hired to collect a  
6 consumer debt and attempted to collect that debt from Plaintiff.

7 17. The alleged debt at issue arose out of transactions, which were  
8 primarily for personal, family, or household purposes.  
9

10 18. Beginning in or around December 2010, Defendant constantly and  
11 continuously placed collection calls to Plaintiff seeking and demanding payment  
12 for an alleged debt owed.  
13

14 19. Defendant called Plaintiff daily, causing Plaintiff to receive more than  
15 twenty (20) collection calls in one month.

16 20. Also, Defendant left daily voicemail messages on Plaintiff's  
17 answering machine.  
18

19 21. Defendant identified itself as NCO Financial Systems, a debt  
20 collection company, and that the call was “an attempt to collect a debt and any  
21 information obtained will be used for that purpose.”  
22

23 22. Defendant failed to provide a call back phone number in its messages  
24 to Plaintiff.  
25



1       23. Upon information and belief, within five (5) days of its initial  
2 communication with Plaintiff, Defendant failed to send Plaintiff written  
3 notification informing her of her rights to dispute the debt and/or request  
4 verification of the debt.  
5

6       24. Defendant's sole purpose in contacting Plaintiff up to twenty (20)  
7 times in one month was to harass Plaintiff.  
8

9       25. Plaintiff disputes owing any debt to Defendant or any other company.

10       26. Defendant conducted its debt collection activities in ways that were  
11 factually misrepresented and in violation of the FDCPA.  
12

### 13                   CONSTRUCTION OF APPLICABLE LAW

14       27. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry,  
15 deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes  
16 strict liability, a consumer need not show intentional conduct by the debt collector  
17 to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996);  
18 see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000)  
19 (holding unintentional misrepresentation of debt collector's legal status violated  
20 FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).  
21

22       28. The FDCPA is a remedial statute, and therefore must be construed  
23 liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235  
24 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts  
25

1 interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d  
2 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA)  
3 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in  
4 favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

6 29. The FDCPA is to be interpreted in accordance with the “least  
7 sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168  
8 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v.  
9 Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA  
10 was not “made for the protection of experts, but for the public - that vast multitude  
11 which includes the ignorant, the unthinking, and the credulous, and the fact that a  
12 false statement may be obviously false to those who are trained and experienced  
13 does not change its character, nor take away its power to deceive others less  
14 experienced.” Id. The least sophisticated consumer standard serves a dual  
15 purpose in that it ensures protection of all consumers, even naive and trusting,  
16 against deceptive collection practices, and protects collectors against liability for  
17 bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at  
18 1318.

22  
23 **COUNT I**  
24 **DEFENDANT VIOLATED THE**  
25 **FAIR DEBT COLLECTION PRACTICES ACT**

30. Defendant violated the FDCPA based on the following:

- a. Defendant violated §1692 generally;
- b. Defendant violated §1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, or abuse the Plaintiff in connection with the collection of a debt;
- c. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring and engaging Plaintiff in telephone conversations repeatedly and continuously with the intent to annoy, abuse or harass; and
- d. Defendant violated §1692g of the FDCPA by failing to send written notification, within five (5) days after its initial communication with Plaintiff, advising Plaintiff of her rights to dispute the debt or request verification of the debt.

31. As a direct and proximate result of one or more or all of the statutory violations above, Plaintiff has suffered emotional distress.

WHEREFORE, Plaintiff, RITA KUHN, respectfully requests judgment be entered against Defendant, NCO FINANCIAL SYSTEMS, INC., for the following:

- a. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection Practices Act,


- b. Statutory damages pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k,
- c. Actual damages,
- d. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k
- e. Any other relief that this Honorable Court deems appropriate.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, RITA KUHN, demands a jury trial in this case.

DATED: 4/8/11

RESPECTFULLY SUBMITTED,  
KIMMEL & SILVERMAN, P.C.

By:   
Craig Thor Kimmel  
Attorney ID # 57100  
Kimmel & Silverman, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
Phone: (215) 540-8888  
Fax: (877) 788-2864  
Email: [kimmel@creditlaw.com](mailto:kimmel@creditlaw.com)